MILLER MFG. CO., Inc. *v.* LOVING.

June 12, 1919.

[59 S. E. 591.]

1. **Master and Servant (§ 96 (1)*)—Unlawful Employment of Minor—Proximate Cause of Injury.**—Wrongful employment of a boy over 14 and under 16, in violation of Laws 1914, c. 339, is a tort, and injury to the child occurring in the performance of his duties under the employment must be referred to the unlawful employment as the proximate cause.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 745.]

2. **Master and Servant (§ 228 (2)*)—Injuries to Servant—Contributory Negligence.**—In an action for injuries to a boy over 14 and under 16 employed by defendant in violation of Laws 1914 c. 339, the Virginia doctrine as to contributory negligence is applicable.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 643.]

3. **Master and Servant (§ 95*)—Injuries to Minor Servant—Statute.**—Where defendant's foreman employed a boy over 14, but under 16, and permitted him to be put at work at a dangerous machine with knowledge of the fact of his age and without having obtained the employment certificate required by Laws 1914, c. 339, § 3, the hiring was in violation of the act, and unlawful, and, besides subjecting defendant to fine for the offense, subjected it to liability, under Code 1904, § 2900, for damages for any injury suffered by the boy, unless contributorily negligent.

Error to Law and Equity Court of Richmond.

Action by Wilbur M. Loving, by, etc., against the Miller Manufacturing Company, Incorporated. To review judgment for plaintiff, defendant brings error. Affirmed

R. L. Montague, Daniel Grinnan, and *C. V Meredith,* all of Richmond, for plaintiff in error.

David Meade White, of Richmond. and *G. B. White,* for defendant in error.

PHŒNIX INS. CO. *v.* SHULMAN CO., Inc.

June 12, 1919

[99 S. E. 602.]

1. **Insurance (§ 115 (4)*)—Fire Insurance—Insurable Interest—Improvements Made by Lessee.**—Lessee would have an insurable in-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

terest in improvements made by it at its own expense, though lease obligated lessor, in case of partial destruction, to restore premises, since lessor in such case would be bound to repair only to the extent of restoring the premises to the condition in which they were when lease was executed and before lessee made improvements in question.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 64, 65; 17 Va.-W. Va. Enc. Dig. 420.]

2. Insurance (§ 493*)—Fire Insurance—"Total Destruction."—Where, as a result of fire, none of materials in improvements made by lessee, insured, could be used to restore the improvements to that class and condition in which they were immediately preceding the fire in question, held, there was a "total destruction," within policy covering such improvements, though there was not a total physical destruction of materials.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Total Destruction. For other cases, see 6 Va.-W Va. Enc. Dig. 96; 16 Va.-W. Va. Enc. Dig. 559; 17 Va.-W. Va. Enc. Dig. 422.]

3. Insurance (§ 146 (2)*)—Contract—Construction.—An insurance contract must be construed in accordance with its terms, and its plain meaning given effect.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 69.]

4. Contracts (§ 162*)—Insurance (§ 146 (3)*)—Construction.—All provisions will be construed together, and seemingly conflicting provisions harmonized, when that can be reasonably done, so as to effectuate the intention of the parties as expressed in the contract; this being especially true as to insurance contracts, which in case of doubt as to their meaning are construed strictly against the insurer and liberally in favor of assured.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 73.]

5. Appeal and Error (§ 882 (12)*)—Invited Error—Requested Instructions.—Insurance company, having asked for an instruction on a rule of law laid down in accordance therewith, and the evidence for assured having fully measured up to such rule, the company is bound by such rule of law.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 62-65.]

6. Appeal and Error (§ 1064 (1)*)—Instructions—Harmless Error.—Where instruction could have been prejudicial to defendant insurance company only in case insured had no insurable interest, contention that giving of the instruction was prejudicial error cannot be sustained; insured in fact having an insurable interest.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600, 601.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Insurance (§ 660*)—Fire Insurance—Amount of Loss—Evidence Admissible.—Where by express provisions interest of insured was the original cost of improvements at a certain date, less monthly decreases named and deductions for depreciation, and insurer was not liable beyond actual cash value of property at time of loss, testimony tending to show the cash value of insured's interest in improvements at the time of fire was admissible.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 453; 17 Va.-W. Va. Enc. Dig. 562.]

Error to Law and Chancery Court of City of Norfolk.

Suit by the Shulman Company, Incorporated, against the Phoenix Insurance Company. Judgment for plaintiff and defendant brings error. Affirmed.

Williams & Tunstall, of Norfolk, for plaintiff in error.

Hicks, Morris, Garnett & Tunstall and *Tazewell Taylor,* all of Norfolk, for defendant in error.

COOPER *v.* NORFOLK SOUTHERN R. CO.

June 12, 1919.

[99 S. E. 606.]

1. Appeal and Error (§ 1061 (1)*)—Harmless Error—Demurrer to Evidence.—Failure to reduce demurrer to evidence to writing at time of announcement was not prejudicial to plaintiff, where it was agreed by counsel that it might be written out later, and where grounds of demurrer were thereafter delivered in writing to plaintiff's counsel and to court.

2. Appeal and Error (§ 719 (1)*)—Assignment of Error—Necessity for.—An irregularity, though excepted to, will not be considered on appeal, where not assigned as error.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 53.]

3. Pleading (§ 236 (4)*)—Amendment—Leave of Court—After Discharge of Jury.—In action against railroad for delay in delivery, court, under 4 Va. Code, p. 675, properly refused plaintiff right to amend declaration by changing date upon which it was railroad's duty to deliver from July 19th to July 16th, after proof of delivery upon July 19th, where plaintiff did not ask for leave to amend until after defendant had demurred to evidence and jury had returned verdict thereon and had been discharged, and where there was nothing

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.